

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO TELEPHONE ASSOCIATION,)	
CITIZENS TELECOMMUNICATIONS)	CASE NO. QWE-T-02-11
COMPANY OF IDAHO, CENTURYTEL OF)	
IDAHO, CENTURYTEL OF THE GEM)	
STATE, POTLATCH TELEPHONE)	
COMPANY AND ILLUMINET, INC.)	
)	
COMPLAINANTS,)	
)	
vs.)	
)	
QWEST CORPORATION, INC.,)	ORDER NO. 29730
)	
RESPONDENT.)	

This case, QWE-T-02-11, was initiated by several small telephone companies and Illuminet, Inc., a third-party provider of SS7 message signaling, to challenge new signaling charges implemented by Qwest in June 2001. In October 2003, Qwest filed an appeal to the Idaho Supreme Court from the Commission's final Order No. 29219. On December 23, 2004, all parties to the appeal filed a Stipulation and Motion with the Supreme Court to dismiss the case and remand it to the Commission. The parties' Stipulation requested the Supreme Court "dismiss the appeal and remand the matter to allow the Commission to determine whether it is appropriate to provide the parties and telecommunications industry with additional clarity as to the scope and precedential impact of its Orders." The Stipulation also indicated that a request for clarification would be filed with the Commission. The Supreme Court granted the Motion to Dismiss and vacated the oral argument hearing that had been scheduled for January 12, 2005.

On February 7, 2005, Qwest filed a Petition for Order to Clarify the Scope of Order Nos. 29219 and 29310, the final Order and reconsideration Order issued by the Commission. Qwest served all other parties with its Petition. Qwest stated in its Petition that the other parties in the case "take no position on this Motion."

Qwest is not asking by its Petition that the Commission change its previous Orders, but seeks clarification of the precedential effect of the Orders. The specific clarification Qwest seeks is a statement that the Commission's Orders "shall be binding only upon the named parties

to the proceeding in which the Orders were entered and cautioning their use as precedent or cited authority by parties to any other proceedings before the Commission, or otherwise.” According to Qwest’s Petition, Illuminet and some of its signaling customers filed similar complaints in other states and, during the course of those cases, “Qwest uncovered many new facts that previously had not been uncovered or presented to this Commission.” Qwest Petition p. 5. Even though new evidence is available in the other states’ proceedings, parties that did not even participate in the Idaho proceeding, including a wireless carrier, apparently “sought to bind Qwest to the Idaho Commission’s decision.” Qwest Petition p. 6. Qwest contends “it is manifestly unfair of others to rely on this Commission’s Orders to attempt to bind Qwest through the offensive use of the doctrine of collateral estoppel,” but that “Qwest is being subjected to this challenge in other jurisdictions.” Qwest Petition p. 6. Noting that the Commission’s Orders were based “only on the facts and circumstances presented to the Commission,” Qwest seeks clarification of the Orders “so that their value as precedent will not be overstated” in other state’s proceedings. Qwest Petition p. 6.

Qwest’s Petition presents concerns about the application of principles of res judicata, as made clear by its reference to the doctrine of collateral estoppel. The Idaho Supreme Court’s early statement of the doctrine that prevents relitigation of the same issues between same parties is from *Joyce v. Murphy Land & Irrigation Co.*, 35 Idaho 549, 553, 208 P.241, 242-43 (1922): “We think the correct rule to be that in an action between the same parties upon the same claim or demand, the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim but also as to every matter which might and should have been litigated in the first suit.” The Court has updated and clarified the long-standing doctrine, now often referring to res judicata as claim preclusion and to collateral estoppel as issue preclusion. See e.g., *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 849 P.2d 107 (1993). The principle is applicable when the same parties are involved in an unresolved dispute, as “an essential element of claim preclusion and issue preclusion is that the same parties or their privies must exist in both the prior case and the present case.” *Anderson v. Farmers Ins. Co. of Idaho*, 130 Idaho 755, 757, 947 P.2d 1003 (1997). Similar principles are embodied in statute for Commission Orders, where *Idaho Code* § 61-625 prevents collateral attack on Commission Orders that have become final and conclusive.

The doctrines of claim preclusion and issue preclusion, as well as the provisions of Section 61-625, would apply if the parties in this case brought additional claims over SS7 signaling charges to the Commission. Although similar principles undoubtedly are part of jurisprudence in all states, the Commission is not in a position to explain the application of res judicata principles to other state commissions. The Commission can clarify and does affirm, as Qwest points out in its Petition, that the Commission's Orders were based solely on the facts presented by the parties in this case relating to services provided in Idaho. So, for example, because no wireless carriers participated in this case, the Commission made no specific findings regarding Qwest's SS7 signaling charges and wireless carriers.

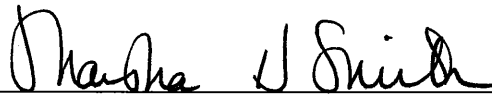
ORDER

IT IS HEREBY ORDERED that Order Nos. 29219 and 29310 are clarified to affirm that the Commission's findings and conclusions were based solely on the record presented by the parties in this case.

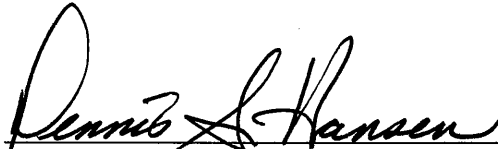
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th day of March 2005.



PAUL KJELLANDER, PRESIDENT

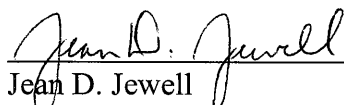


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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